

(S.J.R. 8)

CONSTITUTIONAL AMENDMENT B

JOINT RESOLUTION ON TERM OF APPOINTED LIEUTENANT GOVERNOR

2014 GENERAL SESSION

SENATE VOTE: 24-0-5

HOUSE VOTE: 68-1-6

BALLOT TITLE

☐ FOR

☐ AGAINST

Shall the Utah Constitution be amended to modify the term of office of a person appointed to fill a vacancy in the office of the Lieutenant Governor?

IMPARTIAL ANALYSIS

Constitutional Amendment B modifies a provision of the Utah Constitution relating to the term of office of a person appointed to fill a vacancy in the office of the Lieutenant Governor. The Amendment changes the term of an appointed Lieutenant Governor to avoid a potential situation where the term of an appointed Lieutenant Governor would be different from the term of the Governor.

Background and current provisions of the Utah Constitution

Since 1984, the Utah Constitution has required the candidates for Governor and Lieutenant Governor from each political party to appear together on the same ballot and be voted on together. In 2009, the Utah Constitution was amended to specify what happens in the case of a vacancy in the office of Governor or Lieutenant Governor. Because of the 2009 amendment, it is possible, under certain circumstances, for an appointed Lieutenant Governor to serve to the end of a full four-year term even though the office of Governor is subject to a mid-term election. Likewise, it is possible for a Governor to serve to the end of a full four-year term even though a mid-term election is required for the office of the Lieutenant Governor. Electing a Governor at a mid-term election when the Lieutenant Governor's office is not subject to election, or electing a Lieutenant Governor at a mid-term election when the Governor's office is not subject to election, would be inconsistent with the state's practice and policy since 1984 of electing the Governor and Lieutenant Governor together. Electing a Governor and Lieutenant Governor at different times also creates the possibility that a Governor and Lieutenant Governor would be from different political parties.

Effect of Constitutional Amendment B

Constitutional Amendment B modifies the term of office of a person appointed as Lieutenant Governor so that the term is the same as the term of Governor. The Amendment eliminates the potential that the Governor and Lieutenant Governor might be elected at different times and from different political parties.

Effective Date

If approved by voters, Constitutional Amendment B takes effect January 1, 2015.

Fiscal Impact

Constitutional Amendment B has no fiscal impact.

(CONSTITUTIONAL AMENDMENT B CONTINUES ON THE NEXT PAGE)

CONSTITUTIONAL AMENDMENT B (CONTINUED)

ARGUMENT IN FAVOR

In 2008, the Utah Constitution was amended to address the possibility of a Governor vacating office soon after being elected, or very early in a term. In such situations, the 2008 amendment established (1) that the Lieutenant Governor would assume the role of Governor, (2) that the newly appointed Governor would pick someone to fill the Lieutenant Governor position, (3) that the people would revote the Governor position at the next general election (which would be two years into the original term instead of four), and (4) that the person elected in that general election would serve a two-year term, at which time Utah would return to its normal 4-year cycle.

That amendment was not clear regarding the status of the newly-appointed Lieutenant Governor. Rather than allow uncertainty to exist, this amendment specifies that candidates for Lieutenant Governor would continue to run in tandem with a candidate for Governor, not as a stand-alone candidate.

Senator Urquhart
Utah State Senate

REBUTTAL TO ARGUMENT IN FAVOR

As often happens with legislation, the first version adopted doesn't address every circumstance. Year after year, lawmakers fix laws that don't work as intended. Amendment B is like that. If we pass it, we'll be fixing it before long. What it doesn't address is the special interest voters have in voting on an appointed Lt. Governor as soon as possible.

Our constitution makes it clear that the Lt. Governor takes the Governor place if he steps down. Voters normally will have voted for that Lt. Governor previously.

After such a transition (or when a Lt. Governor steps down) a new Lt. Governor is appointed, one that has not been elected to that position. Our constitution provides that the Lt. Governor stand for election at the next general election after being appointed. That would often be less than a year. It would always be less than two. Amendment B, on the other hand, postpones voter input for up to three years from the Lt. Governor's appointment.

It is a distinct possibility that an appointed Lt. Governor could rise to become Governor without ever having faced the voters. The prospect of an appointed Lt. Governor becoming an un-elected Governor is certainly not what the framers of our Constitution intended. Voters have far too much at stake to wait an extra two years to provide their input on who may one day guide our State.

Support increased voter involvement. Oppose amendment B.

Representative Jim Nielson
Utah State House of Representatives

(CONSTITUTIONAL AMENDMENT B CONTINUES ON THE NEXT PAGE)

CONSTITUTIONAL AMENDMENT B (CONTINUED)

ARGUMENT AGAINST

Amendment B lessens voter involvement in choosing our leaders. Join me in voting no on Amendment B.

Our current rules for replacing the Lt. Governor preserve a principle that is fundamental to our elected Republic: we use elections to choose our political leaders. Indeed, never having weighed in on a newly appointed Lt. Governor (who could well become Governor one day) citizens have a compelling interest in voting to accept or reject this new statewide official at the next reasonably available opportunity—at the first succeeding general election.

Proposed Amendment B might have impacted three of Utah's five most recent Lt. Governors. When two were appointed Governor and another stepped down, replacements were appointed. By constitution, voters weigh in on the Governor's choice at the next general election—within two years or less. Amendment B, however, means an appointed Lt. Governor could go almost four years before facing voters. If we also had to replace the Governor during this same period, Utah could end up with a Chief Executive that had never been elected.

By constitution, if the Governor must be replaced at any time, the Lt. Governor—elected together with the governor—is appointed to fill the vacancy. If the vacancy happens during the first year of a governor's term, the replacement—the Lt. Governor—must stand for election again at the next general election, or less than two years after being appointed Governor. This was the case with Governor Herbert, who was appointed in the summer of 2009, elected for the remaining two-years of that term in 2010, and then elected to a full four-year term in 2012.

Similarly, when a new Lt. Governor must be appointed, our constitution requires that voters have a say in the matter sooner rather than later. Regardless of timing, the new Lt. Governor stands for election at the next general election, even if the governor isn't running that year. This provision is built on the premise that voters have an even greater interest in ratifying the appointment of a new Lt. Governor than they do a replacement Governor. The reason is obvious: A vacancy in the Governor's mansion is, of course, filled by the sitting Lt. Governor, an official that usually will have already been subject to election by voters. But a vacancy at Lt. Governor will always be filled by appointment rather than by a previously elected running mate.

Proposed Amendment B postpones voter input until the next time the Governor is up for election. That could be close to four years down the road. In comparison to what's our constitution requires today, the constitutional tinkering of Amendment B could double the chances of the Governor's office becoming vacant and an unelected Lt. Governor filling the vacancy. Why on earth would we want to increase the chances of having a Governor we never elected?

Please join me in opposing Amendment B.

Representative Jim Nielson
Utah State House of Representatives

(CONSTITUTIONAL AMENDMENT B CONTINUES ON THE NEXT PAGE)

CONSTITUTIONAL AMENDMENT B (CONTINUED)

REBUTTAL TO ARGUMENT AGAINST

Rep. Nielson incorrectly believes that the Utah Constitution requires an appointed Lieutenant Governor (“Lt. Gov.”) to stand for election in the next general election. If that were the case, the Lt. Gov.’s office would be on this ballot—whereas Spencer Cox was appointed LG after the 2012 election. Rep. Nielson’s arguments based on that misunderstanding are equally misguided.

Since 1984, candidates for Governor and LG have always run together. (Utah Constitution, Article VII, section 2). This amendment clarifies that Governor/LG candidates will continue to run together. It’s that simple.

In 2008, Utah voters amended the Constitution, to require a mid-term election for Governor/LG, when the office of Governor is vacated in the first year of a 4-year term. (In 2009, Jon Huntsman, Jr. vacated the office of Governor to serve as Ambassador to China. Gary Herbert moved from LG to Governor and picked his LG replacement. Utah held another Governor/LG election in 2010 to decide the next 2 years.)

Without the clarifying language of this amendment, someone could argue that the language of the 2008 amendment allows an appointed LG to serve 4 years when a mid-term election is required for Governor. This amendment simply clarifies that the offices of Governor AND Lieutenant Governor are voted in tandem. When a special mid-term election is held for the Governor’s office, the LG’s office also will be on the ballot. That’s why every other House and Senate vote was cast in favor of this simple amendment.

Please vote for Amendment B.

Senator Urquhart
Utah State Senate

COMPLETE TEXT OF CONSTITUTIONAL AMENDMENT B

Joint Resolution on Term of Appointed Lieutenant Governor
2014 General Session

Utah Constitution Sections Affected:
Amends:
Article VII, Section 10

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution, Article VII, Section 10, to read:

Article VII, Section 10. [Governor’s appointive power -- Governor to appoint to fill vacancy in other state offices -- Vacancy in the office of the Lieutenant Governor.]

(1) (a) The Governor shall nominate, and by and with consent of the Senate, appoint all State and district officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for.

(b) If, during the recess of the Senate, a vacancy occurs in any State or district office, the Governor shall appoint some qualified person to discharge the duties thereof until the next meeting of the Senate, when the Governor shall nominate some person to fill such office.

(2) If the office of State Auditor, State Treasurer, or Attorney General be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by appointment, from the same political party as the removed person; and the appointee shall hold office until a successor shall be elected and qualified, as provided by law.

(3) (a) A vacancy in the office of Lieutenant Governor occurs when:

(i) the Lieutenant Governor dies, resigns, is removed from office following impeachment, becomes Governor under Article VII, Section 11, ceases to reside within the State, or is determined, as provided in Subsection (3)(b), to have a disability that renders the Lieutenant Governor unable

(CONSTITUTIONAL AMENDMENT B CONTINUES ON THE NEXT PAGE)

CONSTITUTIONAL AMENDMENT B (CONTINUED)

COMPLETE TEXT OF CONSTITUTIONAL AMENDMENT B (CONTINUED)

to discharge the duties of office for the remainder of the Lieutenant Governor's term of office; or
(ii) the Lieutenant Governor-elect fails to take office because of the Lieutenant Governor-elect's death, failure to qualify for office, or disability, determined as provided in Subsection (3)(b), that renders the Lieutenant Governor-elect unable to discharge the duties of office for the Lieutenant Governor-elect's full term of office.

(b) (i) Except when the disability of a Lieutenant Governor is determined under Article VII, Section 11, Subsection (6) because the Lieutenant Governor is acting as Governor under Article VII, Section 11, Subsection (5), the disability of a Lieutenant Governor or Lieutenant Governor-elect shall be determined by a written declaration stating that the Lieutenant Governor or Lieutenant Governor-elect is unable to discharge the powers and duties of the office.

(ii) The written declaration under Subsection (3)(b)(i) shall be transmitted to the Supreme Court and shall be signed by:

(A) the Governor; or

(B) (I) the Lieutenant Governor, if the Lieutenant Governor is the subject of the declaration; or

(II) the Lieutenant Governor-elect, if the Lieutenant Governor-elect is the subject of the declaration.

(iii) If the Lieutenant Governor or Lieutenant Governor-

elect, as the case may be, disputes a declaration transmitted by the Governor under Subsection (3)(b)(i), the Lieutenant Governor or Lieutenant Governor-elect may, within ten days after the declaration is transmitted to the Supreme Court, file a petition requesting the Supreme Court to determine whether a disability exists as stated in the Governor's declaration.

(iv) In determining whether a disability exists, the Supreme Court shall follow procedures that the Court establishes, unless the Legislature by statute establishes procedures for the Supreme Court to follow in determining whether a disability exists.

(v) A determination of disability under this Subsection (3)(b) is final and conclusive.

(c) (i) If a vacancy in the office of Lieutenant Governor occurs, the Governor shall, with the consent of the Senate, appoint a person as Lieutenant Governor, to serve:

(A) except as provided in Subsection (3)(c)(i)(B), the remainder of the unexpired term; or

(B) until the first Monday in January of the year following the next regular general election after the vacancy occurs, if ~~[the vacancy occurs because the Lieutenant Governor becomes Governor]~~ an election is held for Governor and Lieutenant Governor under Article VII, Section 11, Subsection ~~[(2)]~~ (4).

(ii) The person appointed as Lieutenant Governor under Subsection (3)(c)(i) shall be from the same political party as the Governor.

(iii) Neither the President of the Senate nor the Speaker of the House of Representatives may, while acting as Governor under Article VII, Section 11, Subsection ~~[(4)]~~

(5), appoint a person as Lieutenant Governor to fill a vacancy in that office.

Section 2. **Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 3. **Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2015